DOCUMENT RESUME

ED 290 406 HE 021 106

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TITLE The Law Clinic Experience and Moral Judgment. Report of a Preliminary Research Project on the Relationship between a Legal Clinic Program and the Moral Judgment of Third Year Law Students.
PUB DATE Nov 86
NOTE 20p.; Paper presented at the Annual Meeting of the Association for Moral Education (Chicago, IL, November 13-15, 1986).
PUB TYPE Reports - Research/Technical (143) -- Speeches/Conference Papers (150)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Experiential Learning; Higher Education; *Law Students; *Legal Education (Professions); *Moral Values; Student Experience; *Value Judgment
IDENTIFIERS Kohlberg Moral Judgment Interview; Legal Clinics

ABSTRACT

The relationship between a two-semester university-based legal clinic experience and the moral judgment of third-year law school student participants was investigated. A nonstandard form of the Kohlberg Moral Judgment Interview (MJI) was administered to 20 students at the beginning of the clinic and to the remaining 14 students near the completion of the clinic 9 months later. Moral Maturity Scores (MMS), which measure changes in moral judgment, increased significantly (at least one-half stage) in the direction of principled post-conventional thought between pre- and post-clinic interviews for one-half of the sample. Principled thought is the realization that principles of justice rather than rules and laws underlie human relationships. In one case, the increase was of one full stage, stage 3 to stage 4. For the remaining half of the sample, all but two individuals increased their MMS upward within a range of 42 points, with a mean increase of 24.4 points. Given the limitations of the research, the results appear to suggest that law clinics provide an opportunity for moral education and can challenge existing meanings of justice. It was suggested that role-taking opportunities during the clinic promoted the changes. (SW)

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The Law Clinic Experience and Moral Judgement

Report of a Preliminary Research Project on the Relationship Between a Legal Clinic Program and the Moral Judgement of Third Year Law Students.

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Paper presented at the Annual Meeting of the Association for Moral Education, November 13-15, 1986, Chicago, Illinois.

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Abstract

This paper reports the result of a research project investigating the relationship between a two semester, university-based legal clinic experience and the moral judgement of third year law school students participating in the clinic.

A non-standard form of the Kohlberg Moral Judgement Interview (MJI) was administered to twenty students at the beginning of the clinic. Form A of the MJI was administered approximately 9 months later as the students were completing their clinic experience. The final data pool was made up of 14 pairs of interviews which were coded by an experienced coder at Harvard University's Moral Education Research Center. The coder reported that there were increases of one half stage in six cases, and one whole stage in one case. Increases in the remaining cases were not significant. A dependent T-Test statistic was used to analyze the numerical results of pre and post clinic scores and the differences were found to be significant, $p>.05$.

The discussion posited that role-taking opportunities during the clinic were responsible for the changes and proposed questions for guiding further research to account for the differences in scores among the participants.

This paper reports the results of a research project to determine the effects of a one year university-based clinical law experience on the moral judgement of third year law students.

Clinical legal education is a relatively recent phenomenon in the professional preparation of lawyers (Boyd et al. 1980). Prior to 1968, which marks the formation of the Council on Legal Education for Professional Responsibility (CLEPR), the education of lawyers followed the traditional Langdellian model; one law professor using a Socratic method, questions a group of students on their knowledge and comprehension of real and hypothetical cases, decisions, prescedents, etc. Although this form of instruction is still prevalent, the "law clinic" as an integral part of legal education has become ubiquitous. The primary objective of law clinics is to provide law students, usually in their third year, with direct, lived experience of legal advocacy, with real clients under the supervision of an experienced attorney-instuctor (Barnhizer, 1979). According to Luban (1983) "one powerful motive behind the clinical movement was the feeling that it would do a better job of teaching professional responsibility", including the ethical and moral dimensions of the profession.

In a series of papers published in the Journal of Legal

Education, Luban, Condlin, and Redlich (1983) argue whether the clinical model promotes ethical judgment in incipient legal professionals. Redlich, perhaps in a bit of hyperbole, states that "compared to the alternative modes of education and . . .of the value system that traditional (legal) classroom teaching tends to encourage, clinics provide a moral opportunity and not a moral disaster" (1983, p. 615). There are elements of the clinical experience which substantiate Redlich's statement. These will be identified later. It was the purpose of this research to test the effect of one clinical law program on the ethical/moral judgment of student-attorneys. This suggested two questions: 1) what are the conditions necessary for changes in moral judgment measured by a reliable and construct valid instrument? and 2) do these conditions exists in law clinics in a potential causal relationship to changes in moral judgment?

The work of Lawrence Kohlberg in cognitive moral development has created an enormous body of theorizing and research over the past thirty years, (Kuhmerker and Cochrane, 1980, 1981, 1982). Application of the theory has been conducted primarily in schools but also in prisons (Kohlberg, Scharf, and Hickey, 1972) and in clinical psychotherapy (Kegan 1982). The central impetus for stage change Kohlberg refers to as "role-taking", a necessary condition for more complex and comprehensive moral reasoning

(Kohlberg, 1979). Role taking is the ability to cognitively "take" a point of view different from one's own, indeed, at times opposite to one's own, and resolve the conflict in claims. In Stage 1, the individual is unable to perceive "the other" at all. Egocentrism allows for no needs or perspectives other than the perceiver's. In subsequent stages the other is instrumental, a means to my end, (Stage 2), an immediate other or affiliation group, e.g., the family (Stage 3) whose favor and approval mediates my action. In Stage 4, rules and laws of my community/society inform judgment. Doing the right thing is doing what is legal which prevents disorder and preserves the system. Principled thought, the realization that principles of justice rather than rules and laws underlie human relationships emerges in Stage 5. The "other" is the larger cultural group who is entitled to principled consideration. Kohlberg labels this the "prior-to-society" perspective, indicating the incipient understanding of universal principles of justice, the mark of Stage 6 thought. Exemplars of principled thought are the Constitution of the United States (Stage 5) and moral Stage 6 paragons like Gandhi and Martin Luther King, Jr. Recently, Kohlberg has posited that the final Stage 6 is a logically derived philosophical construct, yet little empirical evidence exists for its dominant use among any identified population. (Kohlberg, 1984b) The early version of the Moral Judgement

Interview, the instrument used to determine stage change has been refined and is now widely used. It has high inter-rater and test-retest reliability coefficients, and is more reliable than Rest's (1976) Defining Issues Test (Kohlberg and Colby, 1984a).

Kohlberg and his associates have not ignored the importance of the individual's environment. They have hypothesized that the absence of postconventional levels of thought in some rural settings is not an indication of moral deficiency, but an absence of role taking opportunities (Kohlberg, 1984b). Ostensibly, more complex industrial and post industrial societies provide occasions for interaction with others, hence disequilibrium, hence stage change. Monolithic governance structures in which there is little or no opportunity for participation or debate, although stable, are not contexts that encourage or promote role taking or increases in moral judgment. Therefor, environments where role taking opportunities exist, and where such a process is a normative expectation are more likely to promote moral growth (Higgins, Power, and Kohlberg, 1984).

The Law Clinic and Moral Judment

Given that increases in moral judgment are 1) a function of role taking and 2) a legitimate objective of clinical legal education, does the clinic experience provide role taking opportunities? The following section describes

one clinical law program with this question in mind.

The law clinic where the research was conducted enrolls approximately 40 third year students in a one year "practicum". The host university is an urban, Jesuit institution drawing primarily from the middle and upper middle classes in both its undergraduate and graduate professional education programs. Students apply for admission to the clinic at the end of the second year of study. They are interviewed by the instructors, examined on substantive comprehension of the law, assessed for enthusiasm and the ability to think on their feet, and interest in working with indigent clients. Students admit they are not the top students in their class. They tend have average to slightly above average GPA's as a group, and are motivated to enter the clinic for the practical experience it will give them (Murray, 1983). The final group is chosen to be as heterogeneous as possible across race, gender and class. There are no apparent characteristics that make the entering clinic students significantly different from the majority of other third year students at this law school.

The year typically begins with a one week orientation during which students are introduced to some of the practical aspects of lawyering - conducting client interviews, cross examinations, voir dire proceedings, etc. During the following weeks, students are assigned clients across a variety of legal areas, e.g., immigration, Social

Security, family law, etc. Some are assigned to work with legal services organizations, but the majority are based in the campus facilities allocated for the clinic. All students are expected to carry a case load of 10 cases in various stages of activity, from interview to disposition. (Some graduates report they have had more trial experience at the end of clinic than most of the experienced veterans they work with.) There are four full time attorney instructors who, because of state law and the regulations of the American Bar Association, act as attorneys-of-record for any case they litigate with a student. All have substantial legal experience and their expertise corresponds to the kinds of litigation they accept.

A unique characteristic of this clinic is its governance norm. Although the director is the acknowledged academic and legal authority,, the staff encourage and expect participants to view the clinic as a real law firm, and themselves as junior partners. Students are expected to carry out their responsibilities and to act in accordance with norms of lawyerly decorum. Although the faculty do hold regular content-oriented seminars during the year, the central focus of the clinic is the work of moving cases to resolution. The task is a collaboration between students and instructors. This provides the student not only with the direct activity of lawyering, but with an opportunity to experience another lawyer role model the sequence of case

preparation.

There are several salient features of this law clinic that may provide role taking opportunities as defined by Kohlberg previously, and hence contribute to cognitive moral growth: 1) the client is "real" and not hypothetical. It is arguable that students must, to be successful, take the role of their client(s) in the process of litigation, at least vicariously. Since none of the students have had extensive lived experience being or working with the poor, for them to act as counsel under these circumstances suggests this may be provide sufficiently powerful dissonant information to facilitate stage change; 2) the metaphor of "the firm" in practice blurs the distinction between student and teacher and allows the student to "take the role" of an attorney in the person of her/his mentor/supervisor; 3) the instructional style of some of the instructors includes requiring the student to consider the legal issues from a varity of viewpoints in designing strategy.

Taken together, these features describe a context in which a variety of opportunities exist for role-taking, disequilibrium in a Piagetian sense, and cognitive moral conflict, precursor to stage movement.

Research Methodology

The research question guiding this proposal, - what effect does the clinic experience have on the moral judgment

of students?, - can be operationalized into a measurement derived from and consistent with the theory of cognitive moral development.

Twenty students were invited by the clinic director and the researcher to participate in the study. They were pre and post-tested according to the Moral Judgment Interview (MJI) protocols at the beginning, and at the end of the school year year. The pre-clinic interviews took place in early to mid September and the post-clinic interviews took place in mid to late April of the following year. Each interview took approximately 45 minutes to one hour and in all but two cases, the interviews were tape recorded.

Typically, a pre-clinic interview started by the researcher and the law student becoming acquainted. The general purpose of the research was explained, to "look at changes in the thinking of clinic students regarding issues of justice and morality" during their last year in law school. By and large, all students were very candid and participated in the interview easily and willingly. Three students dropped out before the end of the project, and two interviews were unintelligible. One set of pre and post clinic interviews was not received before this writing. Hence, the total number of protocols forming the data pool was 14.

The tapes were transcribed by a professional transcriber onto Apple diskettes and later printed out. The

printed hard copy was sent to the Harvard University Center for Moral Education where the protocols were scored by an experienced rater.

Limitations

It is assumed that the pool of interviewees, although small, (n=14) was representative of the population of students in the clinic (n=40) although a strictly randomized procedure was not followed. Further, due to limitations of time and money, a matched control group of third year law students not enrolled in the law clinic was not included in the design. Such an addition to the design could have added data that would strengthen the confidence of the results.

The pre clinic interview was conducted with a non-standardized form of the Moral Judgement Interview. Although there exists precedent for use of non-standard forms (Candee, 1975) and the procedures used in coding the protocols meet the test of reasonableness, standardizing the pre and post clinic interviews would also have strengthened the design.

Results

A dependent T-Test comparing the pre and post-test conditions produced a statistically significant result ($t= 5.30$, $df=13$, $p<.05$). Table 1 contains means and standard deviations for the pre and post-test conditions.

TABLE 1

Means and Standard Deviations

	n	Means	Standard Deviations
Pretest	14	366.07	31.68
Posttest	14	398.79	29.29

Table 1 About Here

The data indicate that Moral Maturity Scores (MMS) measuring changes in moral judgement increased significantly (at least one half stage) in the direction of principled post-conventional thought between pre and post clinic interviews for one half of the sampled group (Group A). In one case, the increase was of one full stage, stage 3 to stage 4. For the remainder of the sample, (n=7, Group B) all but two individuals increased their MMS upward within a range of 42 points (9-51), with a mean increase of 24.4 points.

Given the limitations, the results appear to support Redlich's (1983) contention that law clinics do provide an opportunity for moral education. The results further suggest that events occurred during the clinic experience which challenged the existing meanings of justice for half of this group profoundly enough that in eight or nine months those meanings had significantly changed, defined as increases in their moral judgement scores.

Discussion

Theory and research in moral development indicate that "role taking", "the tendency to react to others as like the

self and to react to the self's behavior from the other's point of view " (Kolhberg, 1980, p. 48) is a necessary condition precipitating changes in the stages of moral judgement.

> "Piaget's theory (1932) has stressed the peer group as a source of moral role-taking, while other theories stress participation in the larger secondary institutions . . .(Baldwin, 1897; Mead, 1934). Research results suggest that all these opportunities for role-taking are important and that all operate in a similar direction by stimulating moral development."(Kohlberg, 1980, p. 47)

However, role taking alone is not a sufficient condition. When the roles conflict and claims and expectations are in competition, it is through principles of justice that the conflict is resolved, regardless of the stage of moral judgement. Accordingly, in the case of the law students, we would look for event/opportunities for role taking in contexts of conflicting claims as precursor events precipitating stage change. It seems evident that the entire clinic experience is a sequence of such event/opportunities as all participants were involved in litigating cases for their indigent clients. Anecdotal evidence suggests that

these opportunities appear primarily in three areas: the clients, encounters with the local criminal justice system during litigation, and in the norms of the legal profession itself. For some of the interviewees, working closely for/with people in desperate socio-economic conditions was an unsettling experience. One expressed disappointment that "they were not as grateful as I imagined they would be" for receiving free legal help. Another was overwhelmed by the multiple interconnected dilemmas, both personal and financial that were backdrops for her clients' legal problems. Another was angered when she learned her client, whom she believed was innocent, plead guilty to a lesser charge in spite of her advice. Another questioned his belief in what he had learned about professional ethics when an attorney for the opposition deceived him. We can argue that the role of lawyer promotes belief systems that may be inconsistent with personal moral beliefs, e.g., before answering questions about the Heinz Dilemma, many of the interviewees asked "Do you want me to answer as a lawyer or as me?" It is likely that instructors may well have been active sources for role taking. Instructors in helping a student move through a case may well have required her/him to "react to others as to like the self and to the self's behavior from [another's] point of view". However, no data was collected to confirm this possibility.

The absence of significant differences in pre and post

clinic MJI scores for Group B would suggest that for them there were few or no opportunities for role taking or for resolving moral conflicts. An alternative explanation is that a role-taking event/opportunity can be avoided or reinterpreted in such a way that the cognitive structures for moral meaning operative at the moment of confrontation with the event/opportunity remain undisturbed.

Further research with this group might include some or all of the following questions: 1) are there discernible and distinct patterns in the objective elements of cases litigated, and the processes of litigation for those in each group? 2) are there discernible and different patterns in the meanings they made of their cases identifiable in each group? 3) are there other sources of role taking opportunities that might account for the increase in moral judgment scores not considered in this discussion?

It is further proposed that the current research practices in cognitive moral development, primarily the use of the Moral Judgment Interview as a data gathering tool are limited in their ability to provide insight into the process of change in moral judgment. Metaphorically, pre and post scores provide two snapshots which, when placed side by side clearly demonstrate that some change has occurred, yet they do not provide an explanation regarding the nature of the change. Emerging research conventions in the social sciences termed "ethnographic" or "naturalistic" (Goetz and LeCompte,

1984; Lincoln and Guba, 1985) may provide fruitful tools for these investigations.

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